

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

JUL 22 2019

Clerk, U.S. Courts  
District Of Montana  
Missoula Division

RORY SHANE DAVIS, SR.,

Plaintiff,

vs.

PAUL REES—PHYSICIAN, “JOHN  
DOE” HEALTHCARE  
CORPORATION, and SPECIAL  
NEEDS COMMITTEE,

Defendants.

CV 18–40–H–DLC–JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on May 29, 2019, recommending that the Court: (1) dismiss Plaintiff Rory Shane Davis, Jr.’s complaint pursuant to Rule 41(b); (2) direct the Clerk of Court to enter judgment for the Defendants; and (3) have the docket reflect that any appeal would not be taken in good faith. (Doc. 31.) Davis failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash.*

*Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendations (Doc. 31), the Court finds no clear error in Judge Johnston's recommendation that the Court dismiss Davis's complaint for failure to comply with a court order. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R. Co.*, 370 U.S. 626, 631–32 (1962). Judge Johnston clearly communicated to Davis that dismissal would result from failure to comply, and Davis was given multiple opportunities to file an initial disclosure statement. There is no clear error in Judge Johnston's determination that the relevant factors weigh in favor of dismissal; Davis's apparent refusal to file initial disclosures and share evidence with the Defendants forecloses the possibility that this case can be reliably adjudicated on the merits.

However, the Court does not certify pursuant to Rule 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. No "reasons for the certification or finding" were given in the Findings and Recommendations. Fed. R. App. P. 24(a)(3)(A). Additionally, because Davis has failed to respond to a court order, the Court cannot know if Davis has a legitimate explanation for such failure. No court has considered any legal argument Davis may have regarding failure to prosecute, and so the Court will not find that Davis's appellate arguments would be frivolous.

Accordingly, IT IS ORDERED that:

(1) Judge Johnston's Findings and Recommendations (Doc. 31) is  
ADOPTED IN PART and MODIFIED IN PART; and

(2) The Clerk of Court is directed to close this matter and enter judgment  
pursuant to Rule 58 of the Federal Rules of Civil Procedure

DATED this 22<sup>nd</sup> day of July, 2019.

  
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Dana L. Christensen, Chief Judge  
United States District Court